



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: § Group Art Unit: 2178
Kevin Retlich §
§
Application no.: 09/672,935 § Examiner: Stork, Kyle R.
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Filed: September 28, 2000 §
§
For: MULTILINGUISTIC INDUSTRIAL § Atty. Docket: ALBR:0088/YOD/EUB
CONTROL AND MONITORING § 00AB191
SYSTEM §

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August 3, 2007	 L. Lee Eubanks IV
Date	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Final Office Action mailed on May 3, 2007, Appellant respectfully submits this Pre-Appeal Brief Request for Review. This Request is being filed concurrently with a Notice of Appeal of the Examiner's improper rejection of claims 1-28 of the present application. For at least the reasons set forth in the Response filed March 23, 2007, which are generally summarized below for the convenience of the panel, Appellant respectfully submits that claims 1-28 are allowable over the rejection set forth in the Final Office Action mailed on May 3, 2007. Accordingly, Appellant respectfully requests reconsideration of the above-referenced application in view of the following remarks.

In the Final Office Action, the Examiner rejected claims 1-7 under 35 U.S.C. § 103(a) as unpatentable over Tkacs et al. (U.S. Patent No. 5,526,268) in view of Bapat (U.S. Patent No. 4,916,610) and prior art allegedly admitted by Appellant (particularly, pages 1 and 2 of the specification of the instant application). Claim 8 was also rejected under 35 U.S.C. § 103(a) as unpatentable over Tkacs et al., Bapat, and Appellant's specification, in view of Bargh et al. (U.S. Patent No. 6,212,491). Further, the Examiner rejected claims 9-20 and 22-28 under 35 U.S.C. §

103(a) as unpatentable over Tkacs et al. in view of Appellant's specification, and rejected claim 21 under 35 U.S.C. § 103(a) as unpatentable over Tkacs et al. and Appellant's specification, in view of Bargh. Appellant respectfully traverses these rejections.

Appellant respectfully notes that the Tkacs et al. and Bapat references, as well as the background section of Appellant's specification, collectively fail to disclose each element of independent claims 1, 9, and 20. For instance, independent claim 1 recites "a plurality of monitoring screens...including representations based upon monitoring data collected...via the data network *from the components in which identifying component data is stored*" (emphasis added). Further, independent claim 9 recites "a plurality of components...including at least *data identifying the components stored in the respective components*" (emphasis added). Also, independent claim 20 recites "accessing component status and *identity data from a plurality of electrical components*" (emphasis added). Because the cited references fail to disclose such elements, the cited references cannot support a *prima facie* case of obviousness with respect to independent claims 1, 9, and 20.

In the Office Action, the Examiner acknowledged that the Tkacs et al. reference fails to provide any teaching analogous to the storing and/or collecting of *identifying component data stored within the components themselves*, as variously recited by the independent claims. See Final Office Action mailed May 3, 2007, page 3; *see also id.* at pages 6-8. In an attempt to overcome this deficiency, the Examiner now alleges that such elements are inherently disclosed by statements contained in the specification of Appellant's present application. The Examiner's reliance on these statements is, at best, misplaced.

Referring to Appellant's specification, the passage that the Examiner believes to be relevant reads:

A wide variety of systems are available for control and monitoring functions, particularly in industrial settings. *Such systems may include components which regulate the application of electrical power to loads*, such [as] electric motors. In a motor control center, for example, circuit protection devices, component

protection devices, drives, starters, relays, disconnects, and so forth are interconnected to carryout desired industrial processes. *The processes* may be defined by pre-established routines, and *may rely upon sensed parameters* and operator-induced command inputs, all of which are transmitted through a data network.

Specification, page 1, lines 12-19 (emphasis added). The Examiner noted that this passage refers to “components which regulate the application of electrical power to load.” *See, e.g.*, Final Office Action mailed May 3, 2007, page 3. Indeed, Appellant respectfully notes that the passage of the application reproduced above provides numerous examples of such components for regulating electrical power, including relays, drives, starters, disconnects, and the like.

The Examiner, however, erroneously alleges that the statement that industrial “processes...may rely upon sensed parameters” is somehow an admission of prior art by Appellant with respect to the storing and/or collecting of *identifying component data stored within the components themselves*, as variously recited by the independent claims. Specification, page 1, lines 17-19; *see, e.g.*, Final Office Action mailed May 3, 2007, page 3. In the limited support provided in the Office Action for this assertion, it appears that the Examiner believes that the statement that industrial processes may rely upon sensed parameters inherently discloses the storing and/or collecting of identifying component data stored within components of a system for performing such processes. Appellant notes that, in relying upon a theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied prior art. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). Because the storing and/or collecting of identifying component data stored within components do not necessarily flow from the statement that industrial processes may rely upon sensed parameters, the Examiner’s assertion of inherent disclosure is untenable.

The only reasoning provided by the Examiner in support of this assertion of inherency is a statement that “[s]ince the parameters are sensed from the components, the components inherently store data and transmit the data through the network.” *See* Final Office Action mailed

May 3, 2007, page 3. First, Appellant respectfully points out that the Examiner's conclusion (that the components inherently store data and transmit the data through the network) is based on an incorrect and false assumption as to the allegedly relevant passage of Appellant's specification (that this passage necessarily discloses that the parameters are sensed from the components). It is again noted that the statement relied on by the Examiner merely indicates that industrial processes (such as motor starting and/or shut-down) may rely upon sensed parameters. The passage does not, in fact, necessarily teach or suggest that the sensed parameters are sensed from or stored in the control components, as asserted by the Examiner. Indeed, in numerous applications, such parameters are sensed *by*, rather than *from*, the control components.

As will be appreciated by one skilled in the art, many components (such as relays, disconnects, and the like) are configured to "sense" (i.e., detect) various physical phenomenon (such as the electric current flowing through a conductor, the temperature, and so forth) and react if the sensed phenomenon is outside a certain desired range. For instance, in one exemplary system, a relay may be mechanically configured to sense the current passing to a motor from a power source through a conductor, and to disconnect the motor from the power source if the current exceeds a certain threshold. In another system, a disconnect may include a mechanical, temperature-responsive, switch (which may employ a bi-metal strip, for instance) that opens a power distribution circuit when the sensed temperature exceeds a certain level. In each of these two exemplary systems, the component is mechanically configured to produce a result (i.e., open the circuit) in response to a sensed physical phenomenon or parameter. In other embodiments, control signals (on, off, reset, or the like) may be distributed to such components in response to sensed operating parameters, or in response to operator commands. In short, although these control components may sense operating parameters, there is nothing in the passage of Appellant's specification relied upon by the Examiner that discloses, either explicitly or inherently, that these operating parameters are necessarily sensed from the control components.

Moreover, while components such as relays, disconnects, and the like may *sense* physical phenomenon and parameters of the system, it is evident that such components do not necessarily

store such parameters. Returning to the exemplary control components noted above, and as would be appreciated by one skilled in the art, the relay and the disconnect may each sense operating parameters (current and temperature, respectively, in the examples above) and contain elements that physically move in response to such parameters (via electromagnetic force, thermal expansion, or the like) to disrupt power flow to the motor. It is clear that such control components, and other similar components, while acting in response to a sensed parameter, do not necessarily *store* the sensed parameters.

Ultimately, the passage of Appellant's specification on which the Examiner relies merely teaches that control components may be used to carryout industrial processes, and that such industrial processes may rely, in part, on sensed parameters. There is not any teaching in this brief background passage that such sensed parameters are *necessarily* sensed from or stored in a control component, let alone that such control components *necessarily store identifying component data within the components themselves*, as variously recited by the independent claims. Consequently, this background passage fails to disclose, inherently or otherwise, "a plurality of components...including at least data identifying the components stored in the respective components," or collecting component identification data from such components, as generally recited by the present claims. As none of the prior art of record obviates this deficiency, the present rejection fails to establish a *prima facie* case of obviousness with respect to independent claims 1, 9, and 20, or with respect to their dependent claims, and cannot be sustained. For at least the above reasons, Appellant respectfully requests withdrawal of these improper rejections and allowance of the pending claims.

Respectfully submitted,

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